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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,256	12/02/2003	John McDonald	FCMCCG.002DV1	3528

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EXAMINER

POLLICOFF, STEVEN B

ART UNIT	PAPER NUMBER
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3728

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	01/26/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 01/26/2007.

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Office Action Summary	Application No. 10/726,256	Applicant(s) MCDONALD ET AL.	
	Examiner Steven B. Pollicoff	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-41 and 43-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-41 and 43-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims ^{34 and 43}33 are rejected under 35 U.S.C. 102(b) as being anticipated by Hagedon et al., (US Pat 5,405,000).

With respect to claim 33, Hagedon discloses a packaging assembly comprising a first frame member (Hagedon Fig 8 ref 54) having first and second free edges, a second frame member (ref 53) having third and fourth free edges, a first retention member (Fig 10 ref 51) extending between the first and second free edges and comprising a sheet material, a second retention member (not labeled but see lower portion of ref 51 below product, ref 52) extending between the third and fourth free edges and comprising a sheet material, the first and second frame members being configured to nest with each other (at ref 65 and 69).

With respect to claim 34, Hagedon discloses that the first and second retention members are substantially resilient (i.e. ref 51 is made of plastic and is placed in tension when the case/frame closes), the first and second frame members being substantially rigid (Fig 10 generally).

With respect to claim 43, Hagedon disclose that the first frame member comprises first and second peripherally extending structures supporting the first and

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second free edges (Fig 8 ref 69), respectively, the second frame member comprising third and fourth peripherally extending structures supporting the third and fourth free edges (ref 65), respectively.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 35,37,44 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hagedon et al., (US Pat 5,405,000) as applied to claims 33 and 43 above and further in view of Warburton (US Pat 5,046,659).

With respect to claims 35,37 and 44, Hagedon discloses all the limitations of the claim (including portions extending longitudinally from the first and second free edges and walls extending from the third and fourth free edges) except that the first frame member includes first and second tapered portions extending longitudinally from the first and second free edges, respectively, and the second frame member includes first and

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second inclined walls extending from the third and fourth free edges. However, Warburton discloses first and second tapered portions extending longitudinally from the first and second free edges (Warburton Fig 5 ref 40 and 41; see also Fig 7 and 7a at ref 40c and 40d) and first and second inclined walls extending from the third and fourth free edges (Fig 5 ref 41'; see also Fig 7 and 7a ref 41a',c',d'). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the longitudinally extending portions and walls of Hagedon to make them tapered and inclined, as taught by Warburton, for the purpose of easier and more secure latching engagement (column 4, lines 5-8).

With respect to claim 46, it would have been an obvious matter of design choice to have the peripherally extending structures triangular in cross section as opposed to rectangular, since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art. In re Dailey 149 USPQ 47.

Claims 36,38-41 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hagedon et al., (US Pat 5,405,000) in view of Warburton (US Pat 5,046,659).

With respect to claim 36, Hagedon discloses a packaging assembly comprising a first frame member (Hagedon Fig 8 ref 54) having first and second free edges, a second frame member (ref 53) having third and fourth free edges, a first retention member (Fig 10 ref 51) extending between the first and second free edges and comprising a sheet material, a second retention member (not labeled but see lower portion of ref 51 below

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product, ref 52) extending between the third and fourth free edges and comprising a sheet material, the first and second frame members being configured to nest with each other (at ref 65 and 69). Hagedon also discloses a first portion extending from the first free edge (Fig 8 ref 69), a first wall (65) extending from the third free edge and that the first portion is configured to receive the first wall (Fig 10 at ref 65 and 69). Hagedon does not disclose that the first portion is tapered or that the first wall is inclined.

However, Warburton discloses latching means including a first tapered portion and a first inclined wall, both configured to receive each other (Warburton Fig 7 and 7a).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the first portion and first wall of Hagedon to make the portion tapered and the wall inclined, as taught by Warburton, for the purpose of easier and more secure latching engagement (column 4, lines 5-8).

With respect to claim 38, Hagedon discloses all the limitations of the claim except that each of the first and second free edges including tapered portions disposed at opposite longitudinal ends thereof; and wherein the assembly additionally comprises third and fourth inclined walls supporting the third and fourth free edges, respectively the tapered portions being configured to receive the inclined walls in nesting engagement. However, Warburton discloses first and second tapered portions extending longitudinally from the first and second free edges (Warburton Fig 5 ref 40 and 41; see also Fig 7 and 7a at ref 40c and 40d) and third and fourth inclined walls extending from the third and fourth free edges (Fig 5 ref 41'; see also Fig 7 and 7a ref 41a',c',d'). Therefore, it would have been obvious to one having ordinary skill in the art

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at the time the invention was made to modify the longitudinally extending portions and walls of Hagedon to make them tapered and inclined, as taught by Warburton, for the purpose of easier and more secure latching engagement (column 4, lines 5-8).

With respect to claim 39, Hagedon discloses that at least one of the tapered portions and the inclined walls are configured such that the first and second retention members are deflected inwardly when the tapered portions and the inclined walls are nested (Hagedon column 4, lines 40-49; see also column 6, lines 11-13).

With respect to claim 40, Hagedon discloses that a first recessed area (Hagedon fig 8 ref 58) of the first frame member disposed between the first and second free edges and a second recessed area (Fig 10 not labeled but see open interior below ref 51) of the second frame member disposed between the third and fourth free edges.

With respect to claim 41, Hagedon discloses that the first and second retention members are deflected toward the first and second recessed areas, respectively, when the tapered portions and the inclined walls are nested (Fig 10 generally).

With respect to claim 45, Hagedon discloses a packaging assembly comprising a first frame member having first and second free edges, a second frame member having third and fourth free edges, a first retention member extending between the first and second free edges and comprising a sheet material, a second retention member extending between the third and fourth free edges and comprising a sheet material, the first and second frame members being configured to nest with each other, wherein the first frame member comprises first and second peripherally extending structures supporting the first and second free edges, respectively, the second frame member

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comprising third and fourth peripherally extending structures supporting third and fourth free edges, respectively (see anticipation rejection of claims 33 and 43 above).

Hagedon does not disclose that the assembly additionally comprises tapered portions formed on the opposite ends of each of the first and second free edges, and at least first and second inclined walls forming a portion of the third and fourth peripherally extending structures, respectively, and wherein the tapered portions extend along a first angle of inclination, the first and second inclined walls extending along a second angle of inclination that is approximately equal to the first angle of inclination. However, Warburton discloses tapered portions (at the peripherally extending structures) formed on the opposite ends of each of the first and second free edges (Fig 5,7,7a at ref 40) and at least first and second inclined walls (at the other peripherally extending structures) forming a portion of the third and fourth peripherally extending structures (at ref 41'), respectively, and wherein the tapered portions extend along a first angle of inclination (40d), the first and second inclined walls extending along a second angle of inclination (41d') that is approximately equal to the first angle of inclination. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the peripherally extending portions and walls of Hagedon to make them tapered and inclined, as taught by Warburton, for the purpose of easier and more secure latching engagement (column 4, lines 5-8).

Response to Arguments

Applicant's arguments with respect to claims 33-41 and 43-46 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. Pollicoff whose telephone number is (571)272-7818. The examiner can normally be reached on M-F: 7:30A.M.-4:00P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent

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SBP


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